IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.6133 OF 2005

Bank of India & Ors. ...Applicants
Vs.
M/s Datar Switchgear Ltd. & Ors. ...Respondents

Mr. S.B. Deshmukh for the Applicants.
Mr. G.S. Kulkarni i/by Shri. Satpute for the Respondent No.1.
Ms M. M. Deshmukh, A.P.P. for the State.

CORAM : A. S. OKA, J.
DATE : OCTOBER 18, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Petitioner, the learned Counsel appearing for the Respondent Nos.1 to 3 and the learned A.P.P. for the State. The challenge is to the order passed by the learned Additional Sessions Judge on 13th May, 2005 in a Revision Application filed by the Applicants. The Revision Application was filed by the Applicants for challenging the order issuing process passed by the learned Magistrate on the private complaint filed by the Respondent Nos.1 to 3. Relying upon the decision of the Apex Court reported in 2004 ALL MR (Cri) 3469 Supreme Court in the case of Subramanium Sethuraman Vs. State of Maharashtra & Anr., the learned Additional Sessions Judge held that the Revision Application under section 397 of the Code of Criminal Procedure, 1973 was not maintainable for challenging

an order issuing process.

2. The learned Counsel appearing for the Applicants has invited my attention to the judgment and order dated 28th June, 2005 passed by the learned Single Judge of this Court (Smt. V.k. Tahilramani, J) in Criminal Writ Petition No.1069 fo 2005. The learned Single Judge after considering the decision of the Apex Court in the case of Subramanium Sethuraman (Supra) held that the Revision Application for challenging the order issuing process was maintainable in the Sessions Court under section 397 of the said Code. It is obvious that the view taken by the Revisional Court is contrary to the decision of the learned Single Judge of this Court. The Revision Application filed by the Applicants was maintainable.

3. In this Application challenge is also to the non-bailable warrants ordered to be issued by the learned Magistrate on 01st September, 2005. In view of the averments made in this Application, the said order deserves to be quashed and set aside.

4. Hence, I pass the following order:

: O R D E R :

i) The impugned Judgment and Order dated 13th May, 2005 passed by the learned Additional Sessions Judge, Pune is set aside and Criminal Revision Application No.358 of 2004 is restored to file.

ii) The parties are directed to appear before the learned Additional Sessions Judge, Pune on 16th November, 2005 alongwith authenticated copy of this order.

iii) The learned Additional Sessions Judge will decide the Revision Application as expeditiously as possible and preferably within a period of six months from the date of appearance fixed by this Court.

iv) All contentions of the parties on the merits of the Revision Application are expressly kept open.

v) The order dated 01st September, 2005 passed by the learned Magistrate issuing non-bailable warrants against the Applicant Nos.2 to 4 is quashed and set aside.

vi) The Revision Application is partly allowed in above terms.

vii) Parties and concerned Court to act upon an authenticated copy of this order.

JUDGE